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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,030	03/15/2004	Javier E. Ulloa-Parra	MIM1843	1247

34356 7590 05/02/2007
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JACKSONVILLE, FL 32216

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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05/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

14

Office Action Summary

Application No.

10/801,030

Applicant(s)

ULLOA-PARRA, JAVIER E.

Examiner

Jack H. Morgan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 2, 4, 6, 7 and 9, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simonsen (US 5,720,557) in view of Farquharson et al. (US 4,888,174). Simonsen discloses a bag (Fig 1-4, 10) with a body (14 and 16) with an open top end (20), a closed bottom end (18), a plurality of flexible straps (22 and 24) formed of a durable material (Col 4, lines 38-46), a cavity (32) between the top and bottom ends and a longitudinal axis in a substantially vertical direction. Simonsen does not disclose an outer surface impregnated with a pesticide. Farquharson et al. disclose an insecticide containing polymeric article (Col 3, lines 19-22) to protect the fruit or vegetables inside from insects. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Simonsen with the insecticide containing polymer of Farquharson et al. in order to protect the contents of the bag from insects.

2. Claims 3, 8, 12, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simonsen (US 5,720,557) in view of Farquharson et al. (US 4,888,174) and further in view of Van Gelder et al. (US 2003/0204001A1). Simonsen as modified above discloses all the limitations of the claims except for a quantity of

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fragrance substance impregnated in the outer surface. Van Gelder et al. disclose a plastic bag with a fragrance incorporated therein ([0004]-[0005]) to mask unpleasant odors. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Simonsen as modified above with the additional fragrance of Van Gelder et al. in order to mask unpleasant odors.

3. Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simonsen (US 5,720,557) in view of Farquharson et al. (US 4,888,174) and further in view of Boyd (US 5,265,961). Simonsen as modified above discloses all the limitations of the claims except for a longitudinal axis extending in a substantially horizontal direction and a bottom surface extending along the axis of the body. Boyd discloses a bag (Fig 3) with a horizontal axis (not shown) and a bottom surface extending along the body (Fig 2b, 27-32), in order to prevent the bag from tipping over (abstract). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Simonsen as modified above, with the flat bottom of Boyd in order to prevent the bag from tipping over.

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simonsen (US 5,720,557) in view of Farquharson et al. (US 4,888,174), Van Gelder et al. (US 2003/0204001A1) and further in view of Boyd (US 5,265,961). Simonsen as modified above discloses all the limitations of the claims except for a longitudinal axis extending in a substantially horizontal direction and a bottom surface extending along the axis of the body. Boyd discloses a bag (Fig 3) with a horizontal axis (not shown) and a bottom surface extending along the body (Fig 2b, 27-32), in order to prevent the bag

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from tipping over (abstract). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Simonsen as modified above, with the flat bottom of Boyd in order to prevent the bag from tipping over.

Response to Arguments

5. Applicant's arguments filed March 18, 2007 have been fully considered but they are not persuasive. Applicant argues that the tie straps of Simonsen are integrally formed with the body of the bag while applicant specifically claims separate tie straps connected to the bag. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., separate tie straps) are not recited in the rejected claim(s). Applicant instead claims "a plurality of flexible straps having opposed end portions attached to said body". Examiner submits that the integrally attached straps of Simonsen meet the limitations of the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. In addition, applicant argues that there is no teaching, suggestion or motivation to protect Simonsen's bag from insects due to the difference of Simonsen's and Farquharson's manufacturing techniques. Specifically, applicant states "Simonsen specifically teaches the following: "the polymeric packages or bags of the instant invention are manufactured using conventional extrusion and heat sealing techniques"

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(column 5, lines 14-22). Conversely Farquharson teaches, "the compositions of the present invention are preferably prepared by dry blending together low-density polyethylene and a copolymer such as ethylene/acrylic acid, and then by adding the O-halopyridyl phosphate insecticide to absorb the said insecticide onto the polymer blend."" (Remarks 3/18/07 Page 3 of 4) Regarding applicant's citation of column 6, lines 1-10 of Farquharson, column 6, lines 13-14 in the same paragraph, states that "the composition thus formed can be extruded into articles such as pellets, sheets, films, bags, or shrouds." By this, it is clear that the infused pellets of Farquharson are used in a conventional extrusion technique to create a bag. Thus, the motivation to combine stands as above, to create the bag of Simonsen with the insecticide containing polymer of Farquharson et al. in order to protect the contents of the bag from insects.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER